

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201029018**

Release Date: 7/23/2010

Index Number: 216.01-00, 216.02-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B05  
PLR-154729-09

Date:  
April 14, 2010

In Re:

**LEGEND:**

Corporation =

State =

a =

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e =

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Dear :

This letter responds to a letter dated December 16, 2009, filed on behalf of Corporation requesting a ruling under section 216 of the Internal Revenue Code. This letter responds to that request.

The represented facts are as follows. Corporation is a cooperative housing corporation organized under the laws of State. Corporation is in the process of constructing a mixed-income housing project that will include a residential units in one apartment building. The a units will be divided into b and c low income units, d moderate income units, and e market rate units, with share allocations corresponding to each income category. Corporation has received below-market private financing and subsidized governmental financing that require the inclusion of low income and moderate income units (collectively referred to as the "Affordable Units"), and also entail income eligibility requirements, limitations on purchase prices, and restrictions on resale with respect to the Affordable Units.

Corporation is authorized to issue f shares of common stock entirely to the residential units. Corporation represents that it is authorized to issue only one class of stock. Corporation further represents that the shares of Corporation to be issued with respect to each unit will be fully paid up in an amount bearing a reasonable relationship to the portion of the fair market value of the leasehold property attributable to that unit bears to the fair market value of the leasehold property as a whole.

Corporation requests a ruling that the imposition by governmental units of income eligibility requirements, limitations on purchase prices, and restrictions on resale with respect to certain tenant-stockholders in Corporation shall not cause any person to fail to qualify as a "tenant-stockholder," as defined in § 216(b)(2) or shall prevent Corporation, in which such tenant-stockholder holds stock, to qualify as a "cooperative housing corporation," as defined in § 216(b)(1).

Section 216(a) provides that in the case of a tenant-stockholder (as defined in § 216(b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of:

(1) the real estate taxes allowable as a deduction to the corporation under § 164 that are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses or apartment building are situated, or

(2) the interest allowable as a deduction to the corporation under § 163 that is paid or incurred by the corporation on its indebtedness contracted:

(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) in the acquisition of the land on which the houses or apartment building are situated.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation:

(A) having one and only one class of stock outstanding,

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house or an apartment in a building owned or leased by such corporation,

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) meeting one or more of the following requirements for the taxable year in which the taxes and interest described in § 216(a) are paid or incurred:

(i) 80 percent or more of the corporation's gross income for such taxable year is derived from tenant-stockholders.

(ii) At all times during such taxable year, 80 percent or more of the total square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.

(iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of the tenant-stockholders.

Section 216(b)(2) provides that the term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary of Treasury as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Section 1.216-1(e)(2) of the Income Tax Regulations provides, in relevant part, that in order to qualify as a "cooperative housing corporation" under § 216, each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under § 216(b)(2) and § 1.216-1(f), must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reason of his or her ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

Applying the above standards to the facts and representations submitted and subject to the limitation below, we conclude that provided Corporation satisfies the requirements of § 216(b)(1), the imposition by governmental agencies of income eligibility requirements, limitations on purchase prices, and restrictions on resale with respect to certain tenant-stockholders in Corporation shall not cause any person to fail

to qualify as a “tenant-stockholder” as defined in § 216(b)(2), or shall prevent Corporation in which such tenant-stockholder holds stock to qualify as a “cooperative housing corporation” as defined in § 216(b)(1).

We conclude that the purchaser of the stock of Corporation attributable to the residential units will qualify as a “tenant-stockholder” for purposes of § 216(b)(2), provided such stock is fully paid up in an amount that bears a reasonable relationship to the portion of the value of Corporation’s equity in the building and land that is attributable to the unit that the purchaser is entitled to occupy.

We further conclude, based upon Corporation’s representation that it is authorized to issue only one class of stock, that provided all outstanding shares in Corporation confer identical rights to distribution and liquidation proceeds to Corporation’s tenant-stockholders, Corporation will satisfy the requirements of § 216(b)(1)(A).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express or imply no opinion whether Corporation otherwise meets the requirements of § 216. Specifically, we express or imply no opinion as to whether Corporation meets the requirements of § 216(b)(2) concerning whether the stock bears a reasonable relationship to the portion of the value of Corporation’s equity in the building and land that is attributable to the unit which the purchaser is entitled to occupy.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this ruling must be attached to any income tax return to which it is relevant.

In accordance with the power of attorney on file, a copy of this letter is being sent to Corporation’s authorized representative.

Sincerely,

NICOLE R. CIMINO  
Senior Technician Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for section 6110 purposes